

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2008-1722-MSW-E TCEQ ID: RN105390496 CASE NO.: 36763
 RESPONDENT NAME: BAUDELIO HERNANDEZ DBA CHELAS LANDSCAPING

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 3811 Katy Lane, Bellmead, McLennan County

TYPE OF OPERATION: unauthorized disposal site

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: One complaint has been received. The complainant alleged that the Respondent had a large amount of brush, mulch and cut logs on the property. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on June 15, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Ross Fife, Waste Enforcement Section, MC 128, (512) 239-2541

TCEQ Regional Contact: Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001

Respondent: Mr. Baudelio Hernandez dba Chelas Landscaping, 3811 Katy Lane, Bellmead, Texas 76705

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: January 4, 2008</p> <p>Date of Investigation Relating to this Case: October 1, 2008</p> <p>Date of NOE Relating to this Case: October 16, 2008</p> <p>Background Facts: The EDP RP was filed on January 29, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDP RP on February 12, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDP RP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$2,625</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$2,625</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalties but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease disposing of any additional waste at the Site. 2. Within 30 days, remove all municipal solid waste from the Site and dispose of the waste at an authorized facility. 3. Within 45 days, submit written certification demonstrating compliance.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	28-Oct-2008	Screening	4-Nov-2008	EPA Due	
	PCW	4-Nov-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Baudelio Hernandez dba Chelas Landscaping
Reg. Ent. Ref. No.	RN105390496
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36763	No. of Violations	1
Docket No.	2008-1722-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ross Fife
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section	
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 \$2,500
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	5.0% Enhancement Subtotals 2, 3, & 7 \$125
Notes	Penalty enhancement due to one NOV issued for same or similar violation.
Culpability	No 0.0% Enhancement Subtotal 4 \$0
Notes	The Respondent does not meet the culpability criteria.
Good Faith Effort to Comply Total Adjustments	Subtotal 5 \$0
Economic Benefit	0.0% Enhancement* Subtotal 6 \$0
Total EB Amounts	\$1,649
Approx. Cost of Compliance	\$43,935
*Capped at the Total EB \$ Amount	
SUM OF SUBTOTALS 1-7	Final Subtotal \$2,625
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment \$0
Reduces or enhances the Final Subtotal by the indicated percentage.	
Notes	
	Final Penalty Amount \$2,625
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$2,625
DEFERRAL	0.0% Reduction Adjustment \$0
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)	
Notes	Deferral not offered for non-expedited settlement.
PAYABLE PENALTY	\$2,625

Screening Date 4-Nov-2008

Docket No. 2008-1722-MSW-E

PCW

Respondent Baudelio Hernandez dba Chelas Landscaping

Policy Revision 2 (September 2002)

Case ID No. 36763

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105390496

Media [Statute] Municipal Solid Waste

Enf. Coordinator Ross Fife

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Penalty enhancement due to one NOV issued for same or similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 4-Nov-2008		Docket No. 2008-1722-MSW-E		PCW																	
Respondent Baudelio Hernandez dba Chelas Landscaping		<small>Policy Revision 2 (September 2002)</small>																			
Case ID No. 36763		<small>PCW Revision October 30, 2008</small>																			
Reg. Ent. Reference No. RN105390496																					
Media [Statute] Municipal Solid Waste																					
Enf. Coordinator Ross Fife																					
Violation Number	<input type="text" value="1"/>																				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 330.15(c)"/>																				
Violation Description	<p>Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on October 1, 2008. Specifically, the Respondent allowed approximately 6,000 cubic yards of brush, mulch, and cut wood to be disposed of at the site.</p>																				
Base Penalty				<input type="text" value="\$10,000"/>																	
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td style="text-align: center;">x</td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td></td> <td></td> </tr> </table>					Harm			Release	Major	Moderate	Minor	Actual		x		Potential				Percent <input type="text" value="25%"/>
		Harm																			
	Release	Major	Moderate	Minor																	
Actual		x																			
Potential																					
>> Programmatic Matrix																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>					Falsification	Major	Moderate	Minor						Percent <input type="text" value="0%"/>						
	Falsification	Major	Moderate	Minor																	
Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.																				
Adjustment				<input type="text" value="\$7,500"/>																	
				<input type="text" value="\$2,500"/>																	
Violation Events																					
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="35"/>	Number of violation days																	
<small>mark only one with an x</small>	daily	<input type="text"/>																			
	weekly	<input type="text"/>																			
	monthly	<input type="text"/>																			
	quarterly	x																			
	semiannual	<input type="text"/>																			
	annual	<input type="text"/>																			
	single event	<input type="text"/>																			
One quarterly event is recommended based on the October 1, 2008 investigation date to the November 4, 2008 screening date.																					
Violation Base Penalty		<input type="text" value="\$2,500"/>																			
Good Faith Efforts to Comply																					
		0.0%	Reduction																		
		Before NOV	NOV to EDPRP/Settlement Offer																		
Extraordinary	<input type="text"/>	<input type="text"/>																			
Ordinary	<input type="text"/>	<input type="text"/>																			
N/A	x	(mark with x)																			
Notes	The Respondent does not meet the good faith criteria for this violation.																				
Violation Subtotal				<input type="text" value="\$2,500"/>																	
Economic Benefit (EB) for this violation																					
Statutory Limit Test																					
Estimated EB Amount	<input type="text" value="\$1,649"/>	Violation Final Penalty Total	<input type="text" value="\$2,625"/>																		
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$2,625"/>																	

Economic Benefit Worksheet

Respondent Baudelio Hernandez dba Chelas Landscaping

Case ID No. 36763

Reg. Ent. Reference No. RN105390496

Media Municipal Solid Waste

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$43,935	1-Oct-2008	2-Jul-2009	0.75	\$1,649	n/a	\$1,649
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the municipal solid waste and dispose of it at an approved municipal solid waste disposal site. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$43,935TOTAL \$1,649

Compliance History Report

Customer/Respondent/Owner-Operator: CN603280694 HERNANDEZ, BAUDELIO Z Classification: AVERAGE Rating: 3.00
Regulated Entity: RN105390496 CHELAS LANDSCAPING Classification: AVERAGE Site Rating: 3.00
ID Number(s):
Location: 3811 KATY LN, BELLMEAD, TX, 76705 Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: October 28, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 28, 2003 to October 28, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Ross Fife Phone: 512-239-2541

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 09/02/2008 (701240)
2 10/24/2008 (704352)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/14/2008 (614209)

Self NO
Report?

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failure to obtain written authorization from the TCEQ prior to the dumping or disposal of municipal solid waste.

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BAUDELIO HERNANDEZ DBA
CHELAS LANDSCAPING
RN105390496**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-1722-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, and TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Baudelio Hernandez dba Chelas Landscaping ("Mr. Hernandez").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Hernandez owns and operates an unauthorized disposal site located at 3811 Katy Lane, Bellmead, McLennan County, Texas (the "Site").
2. The Site involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on October 1, 2008, a TCEQ Waco Regional Office investigator documented that Mr. Hernandez failed to prevent the unauthorized disposal of municipal solid waste. Specifically, Mr. Hernandez allowed approximately 6,000 cubic yards of brush, mulch and cut wood to be disposed of at the Site.
4. Mr. Hernandez received notice of the violation on or about October 21, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Baudelio Hernandez dba Chelas Landscaping" (the "EDPRP") in the TCEQ Chief Clerk's office on January 29, 2009.

6. By letter dated January 29, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hernandez with notice of the EDPRP. According to the return receipt "green card", Mr. Hernandez received notice of the EDPRP on February 12, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Hernandez received notice of the EDPRP, provided by the Executive Director. Mr. Hernandez failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Hernandez is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7; TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Hernandez failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Hernandez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Hernandez failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Hernandez and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Hernandez for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Hernandez is assessed an administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Hernandez's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Baudelio Hernandez dba Chelas Landscaping; Docket No. 2008-1722-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Hernandez shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Hernandez shall cease disposing of any additional waste at the Site;
 - b. Within 30 days after the effective date of this Order, Mr. Hernandez shall remove all municipal solid waste from the Site and dispose of the waste at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, Mr. Hernandez shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the ordering provisions requested in Ordering Provision Nos. 2.a. and 2.b. above.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Hernandez. Mr. Hernandez is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Hernandez fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Hernandez's failure to comply is not a violation of this Order. Mr. Hernandez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hernandez shall notify the Executive Director within seven days after Mr. Hernandez becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Hernandez shall be made in

writing to the Executive Director. Extensions are not effective until Mr. Hernandez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Hernandez if the Executive Director determines that Mr. Hernandez has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Baudelio Hernandez dba Chelas Landscaping
Docket No. 2008-1722-MSW-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JENNIFER COOK

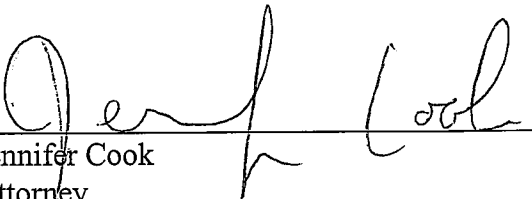
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Jennifer Cook. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Baudelio Hernandez dba Chelas Landscaping" (the "EDPRP") with the Office of the Chief Clerk on January 29, 2009.

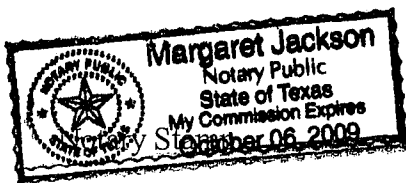
I sent the EDPRP to Mr. Hernandez at his last known address on January 29, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Mr. Hernandez received notice of the EDPRP on February 12, 2009, as evidenced by the signature on the card.


More than 20 days have elapsed since Mr. Hernandez received notice of the EDPRP. Mr. Hernandez failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference".


Jennifer Cook
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jennifer Cook, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 7th day of April, A.D., 2009.




Notary Signature